

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

FEB 27 2007

COURT OF APPEALS
DIVISION TWO

KENNETH S. MACHADO,)	
)	
Plaintiff/Appellant,)	2 CA-CV 2006-0136
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
MARGARET A. MACHADO,)	Not for Publication
)	Rule 28, Rules of Civil
)	Appellate Procedure
Defendant/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20060641

Honorable Carmine Cornelio, Judge

APPEAL DISMISSED

Kenneth S. Machado

Buckeye
In Propria Persona

Law Offices of John Kuhnlein
By John Kuhnlein

Tucson
Attorney for Defendant/Appellee

B R A M M E R, Judge.

¶1 Appellant Kenneth Machado appeals from the trial court's grant of appellee Margaret Machado's motion to dismiss the complaint. He contends the dismissal denied him "his right to due process to a fair trial," and the court erred in denying his request for appointed counsel and the opportunity to amend his complaint. We dismiss his appeal.

Factual and Procedural Background

¶2 Kenneth and Margaret were married in 1994 but separated in 2003. In 2004, Kenneth was convicted after a jury trial of sexual assault, solicitation of a class one felony, and interfering with judicial proceedings; he was sentenced to prison terms totaling 10.5 years. *State v. Machado*, No. 2 CA-CR 2004-0362 (memorandum decision filed May 10, 2006). The victim of the sexual assault was Margaret. *Id.* The solicitation conviction was based upon Kenneth’s attempt to hire someone to murder Margaret. *Id.* On appeal, we affirmed the convictions. *Id.*

¶3 Kenneth and Margaret’s marriage was dissolved in 2006. Margaret was awarded sole legal custody of their two children, and Kenneth was ordered to pay child support and child support arrearages.

¶4 In February 2006, Kenneth filed a “petition for declaratory relief,” alleging that Margaret had violated various criminal statutes¹ by committing perjury in statements she made to the Tucson Police Department and in testimony she gave in Kenneth’s criminal case.² He also alleged Margaret had committed criminal “Custodial Interference” in violation of A.R.S. § 13-1302 and “Access Interference” in violation of A.R.S. § 13-1305.

¹Kenneth alleged Margaret had committed perjury in violation of A.R.S. § 13-2702, “Stating Reckless Falsehoods” in violation of A.R.S. § 13-2703, “unsworn falsification” in violation of A.R.S. § 13-2704, and “Perjury by Inconsistent Statements” in violation of A.R.S. § 13-2705.

²Kenneth also alleged that these various criminal violations “constitute[d] Libel and/or Slander.”

And he claimed Margaret's actions violated his rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.³

¶5 Margaret filed a motion to dismiss the complaint, contending, inter alia, that the criminal statutes she allegedly violated did not provide a private cause of action, any statements she had made either to police officers or at trial were protected by judicial immunity, Kenneth's complaint was an impermissible collateral attack on the custody award, and she could not violate Kenneth's constitutional rights because no state action was involved. Kenneth then moved "for appointment of counsel," which the trial court denied, and later attempted to file an amended complaint without leave of court. The court denied Kenneth's implicit motion for leave to file an amended complaint, stating that although "Rule 15, Arizona Rules of Civil Procedure, allows for liberal amendments of pleadings, the pleading need not be allowed if it fails to state a claim and is otherwise futile. [Kenneth's] complaint, as to this proposed amended complaint, fits this category." After Margaret filed a renewed motion to dismiss the complaint, Kenneth filed an "answer to motion to dismiss" and a motion for sanctions against Margaret. The trial court ruled Kenneth's motion "failed to address legal issues and fails to state a claim" and granted Margaret's motion. This appeal followed.

³In a separate civil action, Kenneth sued two Tucson police officers who investigated his criminal case and testified against him.

Disposition

¶6 Kenneth’s opening brief fails to comply in any meaningful way with Rule 13(a)(4), Ariz. R. Civ. App. P., 17B A.R.S. In his statement of facts, Kenneth fails to provide any citations to the record. He also submits irrelevant material, material that does not appear in the record on appeal, and throughout, appears to be attempting to relitigate issues that were already decided against him in his criminal prosecution. We also note that Arizona courts have consistently held that pro se litigants are entitled to no more consideration than qualified attorneys. *See, e.g., Kelly v. NationsBanc Mortgage Corp.*, 199 Ariz. 284, ¶ 16, 17 P.3d 790, 793 (App. 2000); *Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983). We have examined Kenneth’s arguments and have determined that none is meritorious. We therefore dismiss the appeal. *See Adams v. Valley Nat’l Bank of Ariz.*, 139 Ariz. 340, 342-43, 678 P.2d 525, 527-28 (App. 1984) (dismissing appeal for appellant’s failure to comply with rules of civil appellate procedure); *see also Clemens v. Clark*, 101 Ariz. 413, 414, 420 P.2d 284, 285 (1966) (“The failure . . . to comply with [the predecessor to Rule 13(a)(4)] would ordinarily be regarded by this Court as sufficient cause for dismissal.”).

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

PHILIP G. ESPINOSA, Judge